BURTON A. & MARY H. McGREGOR, ET AL.

IBLA 90-74, et al. Decided April 15, 1991

Appeals from various decisions of the Colorado State Office, Bureau of Land Management, dismissing protests to proposed land exchange. C-45800.

Appeals dismissed; BLM decisions affirmed.

1. Rules of Practice: Appeals: Dismissal--Rules of Practice: Appeals: Statement of Reasons

   Pursuant to the applicable Departmental regulations, an appeal is subject to summary dismissal where a statement of reasons in support of the appeal is not included in the notice of appeal and is not filed within 30 days after the filing of the notice of appeal. Similarly, a statement of reasons filed in support of an appeal which does not affirmatively point out in what respect the decision appealed from is in error does not meet the requirements of the Department's rules of practice and the appeal is also subject to dismissal.

2. Rules of Practice: Appeals: Dismissal--Rules of Practice: Appeals: Standing to Appeal

   Where an individual or organization fails to protest action proposed to be taken by BLM, such an entity has no standing to appeal from the denial of a protest filed by some other individual or organization.

3. Exchanges of Land: Generally--Federal Land Policy and Management Act of 1976: Exchanges

   BLM properly denies a protest of a proposed exchange of public for private land where the protestant fails to establish that BLM did not properly consider any relevant factor bearing on whether the exchange would be in the public interest.

4. Appraisals--Exchanges of Land: Generally--Federal Land Policy and Management Act of 1976: Exchanges

   BLM's appraisal of the value of the land to be involved in an exchange pursuant to sec. 206 of the Federal Land Policy and Management Act of 1976, as amended, 43 U.S.C.

§ 1716 (1988), will not be overturned where the protestant fails to submit any evidence of a contrary value or that BLM erred in its appraisal method or results.

APPEARANCES: Burton A. and Mary H. McGregor, pro sese; Burton A. McGregor, President, and James A. Loudner, Secretary/Treasurer, Grizzley Creek Homeowners Association, for the Grizzley Creek Homeowners Association; Thomas J. Koller, Esq., Brighton, Colorado, pro se, and for Earl D. Giese; Ward H. Fischer, Esq., Fort Collins, Colorado, for the Stelbar Oil Corporation; Cynde D. and D. Marshall Burr, pro sese; Daniel J. Kaup, Esq., Walden, Colorado, for the Meyring Livestock Company; James F. Molnar, pro se; James W. Bockelmann, pro se; Carlie Giese, pro se; Shirley F. Giese, pro se; Mildred L. Giese, pro se; Gordon Giese, pro se; Raymond J. Norby, pro se; Christie Norby, pro se; Dorothy and Norman Wendt, pro sese; Nancy L. Schulz, pro se; Doris A. Schulz, pro se; Ervin and Betty Schulz, pro sese; Leslie A. Dannels, pro se; Lillian C. Dannels, pro se; Everett Randleman, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Burton A. McGregor, for himself and Mary H. McGregor, and for the Grizzley Creek Homeowners Association (Grizzley Creek), and 20 other individuals and two companies have appealed from October 1989 decisions of the Colorado State Office, Bureau of Land Management (BLM), dismissing their protests of a proposed land exchange. 1/

In July 1987, Everett Randleman proposed to transfer some of his private ranch land to the United States in exchange for certain public land, all located in northcentral Colorado. Ensuing negotiations with BLM eventually resulted in a mutually acceptable exchange. BLM thereafter prepared an Environmental Assessment/Land Report (Land Report) on October 12, 1988. In addition, BLM appraised both the public land selected by Randleman and the private land offered by him, as of August 2, 1988.

As finally proposed, the land exchange would involve the transfer of 951.73 acres of public land situated in secs. 4, 5, 7, 9, and 17, T. 5 N., R. 81 W., sixth principal meridian, Jackson and Grand Counties, Colorado, to Randleman in exchange for 640 acres of private land situated in secs. 27, 28, and 34, T. 7 N., R. 80 W., sixth principal meridian, Jackson County

1/ In addition to the McGregors and Grizzley Creek (IBLA 90-74), appeals were filed by the following parties: Earl D. Giese and Thomas J. Koller (IBLA 90-119); Stelbar Oil Corporation (Stelbar) (IBLA 90-120); Cynde D. and D. Marshall Burr (IBLA 90-121); Meyring Livestock Company (Meyring) (IBLA 90-122); James F. Molnar (IBLA 90-123); James W. Bockelmann (IBLA 90-124); Carlie Giese (IBLA 90-125); Shirley F. Giese (IBLA 90-126); Mildred L. Giese (IBLA 90-127); Gordon Giese (IBLA 90-128); Raymond J. Norby (IBLA 90-129); Christie Norby (IBLA 90-130); Dorothy and Norman Wendt (IBLA 90-131); Nancy L. Schulz (IBLA 90-132); Doris A. Schulz (IBLA 90-133); Ervin and Betty Schulz (IBLA 90-134); Leslie A. Dannels (IBLA 90-135); and Lillian C. Dannels (IBLA 90-136).

Colorado, together with certain water rights appurtenant thereto, 2/ pursuant to section 206 of the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, 43 U.S.C. § 1716 (1988). The record indicates that, as a result of the exchange, both Randleman and the United States would acquire additional land adjacent to other land already owned by each.

Notice of the proposed exchange was published in the Federal Register on December 1, 1988 (53 FR 48589), as amended on December 22, 1988 (53 FR 51594). The notice stated that the exchange was intended "to facilitate improved resource management and to dispose of scattered, difficult to manage public land parcels while consolidating ownership of other public lands." 53 FR 48590 (Dec. 1, 1988). The notice invited comments and/or protests to be filed within 45 days of the date of publication.

Comments and protests to the proposed land exchange were filed by a large number of parties. In response thereto, BLM prepared a Revised Land Report, dated August 11, 1989, in which it again recommended approval of the proposed exchange. On August 15, 1989, the District Manager, Craig District Office, approved the recommendation. Thereafter, in his October 1989 decisions, the Acting State Director dismissed the protests of the McGregors and the other parties involved herein, who timely appealed to this Board.

[1] Before addressing the merits of the instant case, we must deal with a number of procedural matters. Initially, for reasons which we will set forth, we must dismiss 15 of the appeals involved herein for failure to file a statement of reasons for the appeal in conformity with the rules of practice of this Board. See 43 CFR 4.412. Additionally, another appeal must be dismissed because appellants have failed to show that they are parties to the case as required by the applicable regulation. See 43 CFR 4.410.

The applicable Departmental regulation, 43 CFR 4.412(a), provides that, "[i]f the notice of appeal did not include a statement of reasons for the appeal, the appellant shall file such a statement with the Board * * * within 30 days after the notice of appeal was filed." Further, 43 CFR 4.402 provides that failure to timely file a statement of reasons in support of an appeal renders an appeal "subject to summary dismissal."

Four appellants failed to set forth any arguable reasons for their appeals in their notices of appeal and have not subsequently filed any statement of reasons in support thereof. 3/ In the absence of any statement of reasons or any explanation for the failure to submit such a statement, these appeals are hereby dismissed. See Edward W. Thorp, 84 IBLA 58 (1984); George L. Clay Lee, 70 IBLA 196 (1983).

2/ The private water rights to be conveyed to the United States along with the private land would be 1.17 cfs (cubic feet per second) of water allowed to flow in the Burke Ditch and 12 cfs of water allowed to flow in the New Burke Ditch, both ditches emanating from Buffalo Creek.

3/ These appellants are Meyring, Dorothy and Norman Wendt, Nancy L. Schulz, and Ervin and Betty Schulz.

Six appellants filed identical notices of appeals in which they stated only that BLM's "findings * * * concerning the actual public use of th[e] [selected] land and the limited public access are incorrect." 4/ Four other appellants, who also asserted that BLM was incorrect in concluding that the selected land was either not used or inaccessible, merely added that their opinion was based on certain personal experience, belief, or knowledge. 5/ No basis for appellants' conclusions that BLM's findings were "incorrect," nor any explanation how any inaccuracy affected BLM's ultimate decisions to dismiss their protests and to proceed with the proposed exchange, was provided.

Where submissions on appeal do not affirmatively point out why the decision appealed from is in error, the appeal must be treated as if no statement of reasons has been filed. See, e.g., Alexander & Martha Acker, 90 IBLA 1 (1985); Glen Gould, 52 IBLA 305 (1981). These 10 appeals are also therefore dismissed.

Similarly, the submissions made by Stelbar Oil Corporation (Stelbar) cannot be said to constitute a proper statement of reasons since they simply aver that the company is "concerned" about the use to be made of the water rights to be acquired by BLM with the offered lands. The mere expression of "concern" neither constitutes an objection to the BLM decision dismissing appellant's protest nor does it provide any basis for ascertaining any specific objection which Stelbar might have. This appeal, too, is properly dismissed. See, e.g., Colorado Open Space Council, 109 IBLA 274, 279-80 (1989); Save Our Ecosystems, Inc., 85 IBLA 300 (1985).

[2] A different procedural deficiency requires dismissal of the appeal brought by Cynde D. and D. Marshall Burr, docketed as IBLA 90-121. On November 13, 1989, the Burrs filed a notice of appeal with BLM, stating that: "We are appealing the findings of the acting State Bureau of Land Management director in dismissing the protests of the interested members of the public to this exchange between Everett Randleman and the Bureau of Land Management." There is, however, no record that the Burrs ever filed a protest to the proposed exchange.

A prerequisite to the right to appeal before this Board is the requirement that a party seeking to appeal be a "party to the case." See 43 CFR 4.410. The leading Board decision on what constitutes a "party to the case" is California Association of Four Wheel Drive Clubs, 30 IBLA 383 (1977), wherein we quoted from an order of Judge Conti rendered in Citizens' Committee to Save Our Public Lands v. Kleppe, C76-32 SC (Jan. 23, 1976):

4/ These notices of appeal were filed by James W. Bockelmann, Shirley F. Giese, Christie Norby, Doris A. Schulz, Leslie A. Dannels, and Lillian C. Dannels.

5/ These appellants are Carlie Giese, Mildred L. Giese, Gordon Giese, and Raymond J. Norby.

> [W]here an individual or group such as Citizens' Committee uses the Federal land in question and is recognized by the Federal Land Management as a bona fide representative of the community and is provided with notice of all proceedings and actions by the Bureau of Land Management regarding the land in question, actively and extensively participates in formulating land use plans for the land in question, and takes the position in a dispute concerning the use of the land in question contrary to another individual or group, that individual or group is a party within the meaning of 43 C.F.R. 4.410. [Emphasis supplied.]

30 IBLA at 386.

This Board has noted that the filing of a protest to an action proposed by BLM is usually sufficient to make the protestant a "party to the case" within the meaning of the regulation (see Elaine Mikels, 41 IBLA 305 (1979)), though one must also show that the decision ultimately rendered adversely affected their interests in order to maintain an appeal. But the Board has also expressly held that an individual cannot establish that he or she is a "party to the case" merely by attempting to appeal from the denial of someone else's protest. See In re Pacific Coast Molybdenum Co., 68 IBLA 325, 331 (1982), and cases cited. The Burrs, having failed to protest the pro-posed exchange, are unable to show that they are parties to the case within the meaning of 43 CFR 4.410 and their purported appeal must be dismissed. In re Pacific Coast Molybdenum Co., supra.

One last procedural matter must be addressed. The appeal docketed as IBLA 90-119 poses an unusual problem. On November 13, 1989, Thomas J. Koller, acting for himself and as an attorney for Earl D. Giese, filed a notice of appeal with BLM on behalf of himself and Giese. While the record discloses that Koller had filed a protest on his own behalf, there is no record of any protest of the proposed land exchange having been filed by Giese. Thus, as with the appeal filed by the Burrs, any purported appeal on behalf of Giese must be dismissed as he lacks standing to appeal under the regulations.

Insofar as Koller is personally concerned, we note that in the statement of reasons which he submitted on November 24, 1989, Koller prefaced the reasons for appeal by noting that: "COMES NOW Earl D. Giese by counsel and argues that the decision of the Director in dismissing a protest to a proposed land exchange was in error." No mention was made therein whether Koller intended to pursue his own appeal.

Nevertheless, we will treat the statement of reasons submitted by Koller as one filed by him on his own behalf. We believe this treatment is warranted because of the joint nature of the original appeal. Moreover, we note that the statement of reasons principally contends that the "findings of the Acting Director in rendering a decision dismissing the protest of the proposed Randleman Exchange * * * are clearly in error." Since Giese did not file a protest, the submission must necessarily contest the BLM decision dismissing Koller's protest. Furthermore, inasmuch as Koller claims to use the selected lands, he would have the requisite nexus of

interests necessary to confer standing to appeal. See Letter to BLM from Koller, dated December 22, 1988; National Wildlife Federation, 82 IBLA 303, 307-08 (1984).

We turn, therefore, to the merits of the present case. 6/ The remaining appellants (the McGregors, Grizzley Creek, Koller, and James F. Molnar) collectively raise a number of challenges to the BLM decisions to dismiss their protests and to proceed forward with the proposed land exchange, which challenges we will deal with seriatim.

[3] Section 206(a) of FLPMA, as amended, 43 U.S.C. § 1716(a) (1988), authorizes the Secretary of the Interior to dispose of a tract of public land by exchange where he "determines that the public interest will be well served by making that exchange."

In determining whether an exchange is in the public interest, section 206(a) of FLPMA states that the Secretary "shall give full consideration to better Federal land management and the needs of State and local people, including needs for lands for the economy, community expansion, recreation areas, food, fiber, minerals, and fish and wildlife." Id. Furthermore, it provides that the Secretary shall find that "the values and the objectives which Federal lands or interests to be conveyed may serve if retained in Federal ownership are not more than the values of the non-Federal lands or interests and the public objectives they could serve if acquired." Id.

In its Revised Land Report, BLM noted that all of the land covered by the Kremmling Resource Management Plan, including the selected parcels, had been identified as available for exchange "if the action would result in consolidated land ownership patterns, improved manageability of natural resources, [was] in the public interest, and not in a site-specific inventory or analysis identifying it as not suitable for disposal" (Revised Land Report at 2). BLM pointed out that the effect of the proposal would be to exchange various isolated parcels which BLM now managed for a single parcel adjacent to lands which BLM already managed, thereby consolidating land ownership patterns. Moreover, the exchange would result in a net increase of approximately 153 acres of floodplain/riparian/wetlands complex under BLM management, which would be added to the Hebron Waterfowl Area and

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6/ With respect to the appeals of the McGregors and Grizzley Creek, we note that on Dec. 22, 1989, Randleman filed a motion to dismiss their appeals, contending that he had not been properly served with copies of their statement of reasons for appeal. While appellants were required by 43 CFR 4.413(a) to serve copies of all submissions on Randleman, the copies of the statement of reasons appended to his motion to dismiss attest to the fact that he eventually received these documents and has had ample opportunity to respond thereto. We, therefore, can discern no prejudice to Randleman flowing from appellants' failure to properly serve him and accordingly decline to dismiss the appeals.

managed for wildlife habitat protection. Id. at 9. Accordingly, it was concluded that the proposed land exchange was consistent with the regulations implementing section 206 of FLPMA and was in the public interest.

Appellants generally contend that BLM erred in concluding that the transfer of the selected public land out of Federal ownership would be in the public interest, challenging a number of the factual conclusions drawn by BLM and additionally asserting that BLM failed to consider certain other matters, thus basically questioning the adequacy of the Revised Land Report.

In particular, all of the appellants argue that BLM based its ultimate conclusion as to the desirability of the exchange on the erroneous assertion that the selected land is inaccessible to the public. Thus, it is contended that, in fact, the selected land is "contiguous to" or "borders on" State Highway 14. 7/

Contrary to appellants' assertions, however, it is clear that BLM recognized that part of the selected land is adjacent to State Highway 14 in the NW 1/4 sec. 4, T. 5 N., R. 81 W., and, thus, somewhat accessible to the public. However, BLM also noted in its Revised Land Report that public access to the selected land was "limited" both "because of minimal highway frontage" as well as the "fragmented structure of the parcel." Id. at 6. There is no factual basis for the assertion that BLM considered the selected parcels to be totally inaccessible to the public.

The McGregors and Grizzley Creek dispute BLM's assessment that usage of the selected land is "limited to only adjacent landowners," noting that the land is used by other members of the public (McGregor Statement of Reasons (SOR) at 2 (emphasis added)). Appellants, however, have misread the statement of BLM to which they apparently allude. Thus, BLM merely noted that "[b]ecause of the minimal highway frontage and the fragmented structure of the parcel, recreational use of the selected public land is generally limited to the owners of the adjoining private land" (BLM Decision on McGregor Protest, dated Oct. 9, 1989, at 2 (emphasis added)). BLM clearly did not suggest that other members of the public do not use the selected land. Indeed, in its Revised Land Report, BLM recognized such use, noting, however, that limited public access precluded more than limited public use. See Land Report at 6. Thus, BLM acknowledged that other members of the

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7/ Koller also asserts that there is a parking area on the selected land abutting the highway (Koller SOR at 1). Randleman, however, points out that, while the land abuts the highway, there is no adjacent parking lot off of the highway on the public land. He also submitted a Dec. 14, 1989, letter from the State Department of Highways, which confirms that there is "no [parking] area" within the State right-of-way for those wishing to access the selected land at the point of contact with the highway in the NW 1/4 sec. 4.

public utilized the land, though it further noted that the numbers who could do so were necessarily limited because of the circumscribed nature of available access.

The McGregors and Grizzley Creek also challenge the proposed exchange on the ground that BLM failed to consider the creation of waterfowl and fish habitat on the selected lands where the land is crossed by Grizzly Creek and contains associated streams and ponds. McGregor SOR at 1. They argue that, while cattle grazing has "seriously impacted the stream banks and destroyed the area for fishing (brown trout) and wildfowl production currently," this could be changed by precluding such grazing. Id.

In deciding whether to go forward with the proposed exchange, BLM noted the presence of Grizzly Creek and associated riparian habitat within the selected land, aggregating approximately 65 acres of floodplain/ riparian/wetlands complex. See Revised Land Report at 4, 5. However, BLM concluded that the potential for management of this complex was limited since it was "divided into 3 segments from 7 to 48 acres in size." Id. at 8. Thus, BLM considered the potential for improvement of the waterfowl and fish habitat associated with Grizzly Creek within the selected land but determined that, given inherent difficulties in accomplishing this result, this possibility did not render transfer of the land as part of the exchange contrary to the public interest. Compare with Staley Anderson, 44 IBLA 58 (1979). 8/

Koller challenges the accuracy of the conclusion, which he ascribes to BLM, that the offered land provides "better hunting opportunities and more potential outdoor recreational activities" than the selected land, noting that the offered land "has always been a private ranch utilized for cattle production and hay growing" (Koller SOR at 1). He contends that the offered land is similar to "tens of thousands of acres" of nearby land, some of which is owned by BLM. He argues that, by contrast, the selected land is "unique" since it is the "only Bureau of Land Management land available for public use in the Big Grizzly Creek drainage." Id.

In its Revised Land Report, BLM recognized that the hunting and other recreational opportunities occasioned by the presence of big and upland game on the selected lands would be lost with their disposal. See Revised Land Report at 4. But it also recognized that, in this regard, the limited nature of the existing public access necessarily diminished the ability of the general public to avail itself of these opportunities.

8/ The McGregors and Grizzley Creek also argue that BLM failed to consider the fact that disposal of the selected land would preclude any prospect for the development of public access "along" a 5-mile stretch of the Continental Divide between the Arapahoe and Routt National Forests, noting that "[i]f the BLM * * * ever entertained long term plans for * * * access along the continental divide then the exchange property should not be traded." See McGregor SOR at 1. In the absence of any indication that any such long-term plans are under consideration, this issue must be considered purely speculative.

Moreover, BLM pointed out that this admitted loss of recreational opportunities must be offset by the benefits obtained by the acquisition of the offered land which would provide "waterfowl, sage grouse, and antelope hunting opportunities." Id. at 6. Thus, BLM noted that, while waterfowl hunting is in great demand, it is of limited availability in northern Colorado. Id. BLM further noted that this land would be "accessible to the public" upon acquisition. Id. at 9.

BLM disputed Koller's assertion that the offered land is only a private ranch used for cattle production and hay growing, pointing out that, compared to 65 acres of the selected land, 218 acres of the offered land are what is described as a floodplain/riparian/wetlands complex. Revised Land Report at 8. Thus, BLM concluded, the exchange would result in a net increase of 153 acres of such lands in Federal ownership. Such lands would be available for wetlands wildlife habitat protection which is "currently the highest priority for management in the Bureau's wildlife program" and would also provide additional opportunities for wetlands- habitat related recreations such as waterfowl hunting, bird watching, and photography. Id. at 13-14.

And, with respect to Koller's assertion that the selected land is the only BLM land in the Big Grizzly Creek drainage, the record establishes that this is simply not the case. Appellee Randleman points out "there is approximately 2 miles of Grizzly Creek on public land in Sections 26 and 35, T. 6 N., R. 81 W. and Sec. 2, T. 5 N., R. 81 W. which is located only 1 and 1/2 miles east on Highway 14 from the selected BLM land in Sec. 4" and concludes that there is approximately 1,400 acres of BLM land in the drainage. See Randleman Response at 2-3. 9/ These assertions are corroborated by an analysis of the map of the selected land and the surrounding area, which is attached to the Revised Land Report.

In summary, therefore, we conclude that appellants have not demonstrated that BLM failed to properly consider any relevant factor bearing on the question of whether the proposed land exchange would be in the public interest. See National Coal Association v. Hodel, 825 F.2d 523, 532 (D.C. Cir. 1987); John S. Peck, 114 IBLA 393, 397 (1990); City of Santa Fe, 103 IBLA 397, 401-02 (1988); National Wildlife Federation, 87 IBLA 271, 277-79 (1985); Seven Star Ranch, Inc., 78 IBLA 366, 368 (1984); F. F. Montoya, 70 IBLA 93, 95 (1983). Nor have appellants established that

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9/ Koller also argues that the proposed exchange would not be in the public interest where it would remove "grazing land" from the public domain. See Koller SOR at 2. The Revised Land Report notes that disposal of the selected land would cause the loss of 272 animal unit months (AUM's) of grazing privileges, while acquisition of the offered land would result in a gain of 261 AUM's, for an overall net loss of only 11 AUM's. BLM describes this as an "insignificant loss." See Revised Land Report at 7. We agree. In any event, Koller has failed to describe how he is adversely affected by the impact of the proposed exchange on grazing and, thus, lacks the requisite standing to raise this issue. See, e.g., Colorado Open Space Council, supra; Save Our Ecosystems, Inc., supra.

the decision of BLM to go forward with the proposed exchange is not sustainable on the present record.

The final question relates to the appraisal of the properties involved and was raised by appellant Molnar. Molnar contends that BLM erred in concluding that the United States will receive private land of equal value to the public land that it will transfer out of Federal ownership. He argues that the asking price for acreage adjacent to the selected lands is between $1,000 to $3,000 per acre, while the assessor's office in Walden, Colorado, valued the offered land at between $200 to $400 dollars an acre. See Molnar's SOR at 1.

[4] With respect to this argument we note that, as amended by the Act of August 20, 1988, 102 Stat. 1087, 10/ section 206(b) of FLPMA, as amended, 43 U.S.C. § 1716(b) (1988), provided, in relevant part, that:

> The values of the lands exchanged by the Secretary * * * either shall be equal, or if they are not equal, the values shall be equalized by the payment of money to the grantor or to the Secretary * * * as the circumstances require so long as payment does not exceed 25 per centum of the total value of the lands or interests transferred out of Federal ownership. [Emphasis added.]

According to the record, the selected and offered lands were appraised by BLM pursuant to an appraisal completed August 25, and approved on September 8, 1988. 11/ BLM calculated the value of the lands as of August 2, 1988, using the market data approach, i.e., BLM compared the

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10/ The Act of Aug. 20, 1988, was adopted to help speed the processing of exchange proposals and deals primarily with aspects of appraisal and directed the Department to promulgate new rules and regulations implementing the changes adopted. See 43 U.S.C. § 1716(f)(1) (1988). While the Department has issued proposed regulations (see 54 FR 34380 (Aug. 18, 1989)), these regulations have not yet been finalized. We note that section 1716(g) of FLPMA, as amended, 43 U.S.C. § 1716(g) (1988), expressly provides that "[u]ntil such time as new and comprehensive rules and regulations governing exchange of land and interests therein are promulgated * * * land exchanges may proceed in accordance with existing laws and regulations * * * ." Accordingly, the appraisal procedures utilized herein have been conducted and are being reviewed pursuant to the pre-Aug. 20, 1988, authorizations.

11/ In its appraisal, BLM valued only the surface estates of the selected and offered land since that was all that would be conveyed under the proposed exchange. BLM also concluded, at that time, that the parcels had the same highest and best use, i.e., assemblage for livestock production. However, BLM subsequently recognized in September 1988 that the highest and best use of the selected land was trending towards recreational development. See Memorandum to the District Manager from the Acting Chief State Appraiser, Colorado, BLM, dated Sept. 7, 1988, at 1.

land to be appraised with sales of similar property in the vicinity of that land, adjusting for any differences in terms of factors affecting fair market value. BLM valued the selected land at $163,000 and the offered land at $160,000. The review appraiser recommended that the parcels of land be considered to be of equal value since the values were approximately equal and that it was likely that private parties to such an exchange would probably consider the exchange to be equal in value.

In challenging the BLM appraisal of the selected and offered land, Molnar merely asserts that the per acre values of those parcels of land differ by as much as 1,500 percent. However, there is no indication that the per acre value reported by Molnar is actually the fair market value of either parcel of land.

In the case of the selected land, Molnar states that the reported value is the "asking price," presumably of the seller, for adjacent land. In the case of the offered land, he states that the reported value is that obtained from the assessor's office, thus presumably reflecting the valuation of the land for tax purposes. In neither case can we say that there is a reasonable probability that the value reported by Molnar is the price which would be mutually agreed to by a willing and knowledgeable buyer, who is not obligated to buy, and a willing and knowledgeable seller, who is not obligated to sell, i.e., fair market value. See American Telephone & Telegraph Co., 25 IBLA 341, 349-50 (1976).

Further, Molnar does not present any evidence in support of his assertions of value. Most importantly, he does not submit an independent appraisal of the values of the offered and selected land. The failure to submit such supporting evidence, and especially an independent appraisal, is fatal to appellant's challenge to the BLM appraisal, particularly since he has completely failed to demonstrate any error in BLM's appraisal methodology or results. See F. F. Montoya, supra at 95; Paul Kellerblock, 38 IBLA 160, 165 (1978). Therefore, we conclude that BLM properly appraised the values of the selected and offered land and determined that the values are equal given the inexactitude of the appraisal process. 12/

Koller has requested that we refer the case to the Hearings Division for the assignment of an administrative law judge to conduct a fact-finding hearing. However, in the absence of the identification of any issue of fact which is material to disposition of the present case, we decline to do so. See Woods Petroleum Co., 86 IBLA 46, 55 (1985).

12/ We note that BLM has recognized that, prior to consummation of the proposed exchange, another appraisal of the selected and offered land will need to be prepared in order to determine the present values of the land involved. See BLM Decision on Houston Protest, dated Oct. 5, 1989, at 1. See also Paul Kellerblock, supra at 172 (concurring opinion). This would accord with the rules proposed in 1989, which make appraisals binding on the parties thereto for only 1 year. See 43 CFR 2201.2-2(f) (54 FR 34387 (Aug. 18, 1989)).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed with respect to the appeals filed by Grizzley Creek, Koller, Molnar, and the McGregors, and the appeals of all other parties are dismissed.

James L. Burski
Administrative Judge

I concur:

John H. Kelly
Administrative Judge